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MEMORANDUM

FEBRUARY 11, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY AND STEPHEN COYLE, DIRECTOR

FROM: RICARDO A. MILLETT, ASSISTANT DIRECTOR FOR NEIGHBORHOOD HOUSING AND DEVELOPMENT
IVY DILWORTH, PROJECT MANAGER

SUBJECT: FINAL DESIGNATION OF HUB BUILDING REALTY TRUST AS REDEVELOPER FOR REUSE PARCELS SE-58, SE-117 AND SE-118, LOCATED AT 1134-40 WASHINGTON STREET AND 14-24 AND 28-34 FAY STREET, RESPECTIVELY, IN THE SOUTH END URBAN RENEWAL AREA, PROJECT NO. MASS. R-56.

SUMMARY: This memorandum requests that the Hub Building Realty Trust be granted final designation as redeveloper of 1134 Washington Street and 14-24 and 28-34 Fay Street and adjacent areas for the purposes of rehabilitating the building into ground floor retail space, second floor commercial/light industrial space, and third and fourth floor artists' live/work units and developing fourteen parking spaces (the "Project").

On June 12, 1986, the 1134 Washington Street Trust was tentatively designated as redeveloper of Re-use Parcel SE-58, located at 1134-40 Washington Street and 97-107 East Berkeley Street, and Re-use Parcels SE-117 and SE-118 located at 14-24 and 28-34 Fay Street, respectively, a vacant lot located at the rear of the building. The structure at 1134-40 Washington Street is a four-story brick commercial mercantile building on 8,366 square feet of land; the Fay Street lots total approximately 4094 square feet of vacant land.

The 1134 Washington Street Trust was originally formed for the purpose of joint development of the building by HUB Building Realty Trust (HUB) and Artist Tenants of the South End (Atse). HUB consists of Milton Kamenides, owner of Dover Bargain Store, Inc. d/b/a Harry the Greek's, a tenant on the ground floor of the building pursuant to a License Agreement with the Authority dated as of October 1, 1980, and a tenant in the immediate vicinity of the Project since 1936; and Bernard Potischman and Joseph Proman, owners of Proman Manufacturing, Inc., a tenant on the second floor of the building since approximately 1944. HUB

was formed to provide affordable, long-term manufacturing and neighborhood service-oriented retail space as well as to protect its members' tenancies.

Atse is a group of visual artists, painters, sculptors and printmakers who live in the South End. The escalating rents in the South End are forcing the artists to relocate to other areas. Atse was organized for the purpose of finding permanent, affordable housing for these artists.

Subsequent to tentative designation of the 1134 Washington Street Trust, discussions between the Authority, HUB and Atse resulted in a revised project plan calling for HUB to act as turnkey redeveloper of the Project, on its own behalf and on behalf of Atse. Accordingly, it is now proposed that HUB receive final developer designation.

The proposal by HUB calls for the development of the first floor into three retail/commercial spaces, including one to be occupied by the Dover Bargain Store, Inc. The second floor would be rehabilitated for continued use as light manufacturing space for Proman Manufacturing, Inc. The third and fourth floors would be redeveloped into seven permanent artists' live/work spaces for use by Atse. The vacant lots would be developed into fourteen parking spaces. Following conveyance of the building to HUB, HUB would complete shell renovation and would thereafter submit the property to the condominium form of ownership. The top two floors and half the basement would make up one condominium, to be sold to Atse; and the bottom two floors and the other half of the basement would make up the second condominium, to be retained by HUB. Each party would receive half of the parking spaces in fee simple. The upper floor condominium would be sold to Atse for a purchase price of \$602,995.00, pursuant to a purchase and sale agreement between the parties dated February , 1988.

The total development cost for this Project is estimated at \$1.7 million. Private financing will be secured by HUB for the common area improvements, including exterior brick walls, roof, stairways, elevator, basement and parking lot. HUB and Atse will each obtain its own financing for the improvements to its own condominium units required to obtain a certificate of occupancy.

All work would be done according to plans and specifications previously approved by the parties and by the Authority staff.

Moore-Heder Associates is the project architect. The contractors will be Cornu Construction, of Boston. Zarelli-Doney Associates is the development consultant.

The proposal for redevelopment of this structure has the support of the South End community, as well as individuals such as Senator Kennedy, Representative Moakley, Representative DiMasi, and Representative Markey.

In order to maintain the objectives of creating affordable artists live/work space and affordable commercial space, the Authority will include separate deed restrictions and resale controls for the residential condominium unit and for the light manufacturing/commercial condominium unit.

It is therefore recommended that HUB be finally designated as redeveloper of Re-use Parcels SE-58, SE-117, SE-118, located at 1134-40 Washington Street/97-107 East Berkeley Street and 14-24 and 28-34 Fay Street, respectively, for the purpose of rehabilitating the building into ground floor retail space, second floor commercial space, and third and fourth floor artist live/work spaces, and creating fourteen parking spaces.

An appropriate resolution is attached.

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY

RE: FINAL DESIGNATION OF PARCELS SE-58, SE-117 AND SE-118 IN
THE SOUTH END URBAN RENEWAL AREA
PROJECT NO. MASS. R-56

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified project; and

WHEREAS, the Urban renewal Plan for the South End Urban Renewal Area, Project No. Mass. R-56 (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, state and federal law; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion, or national origin; and

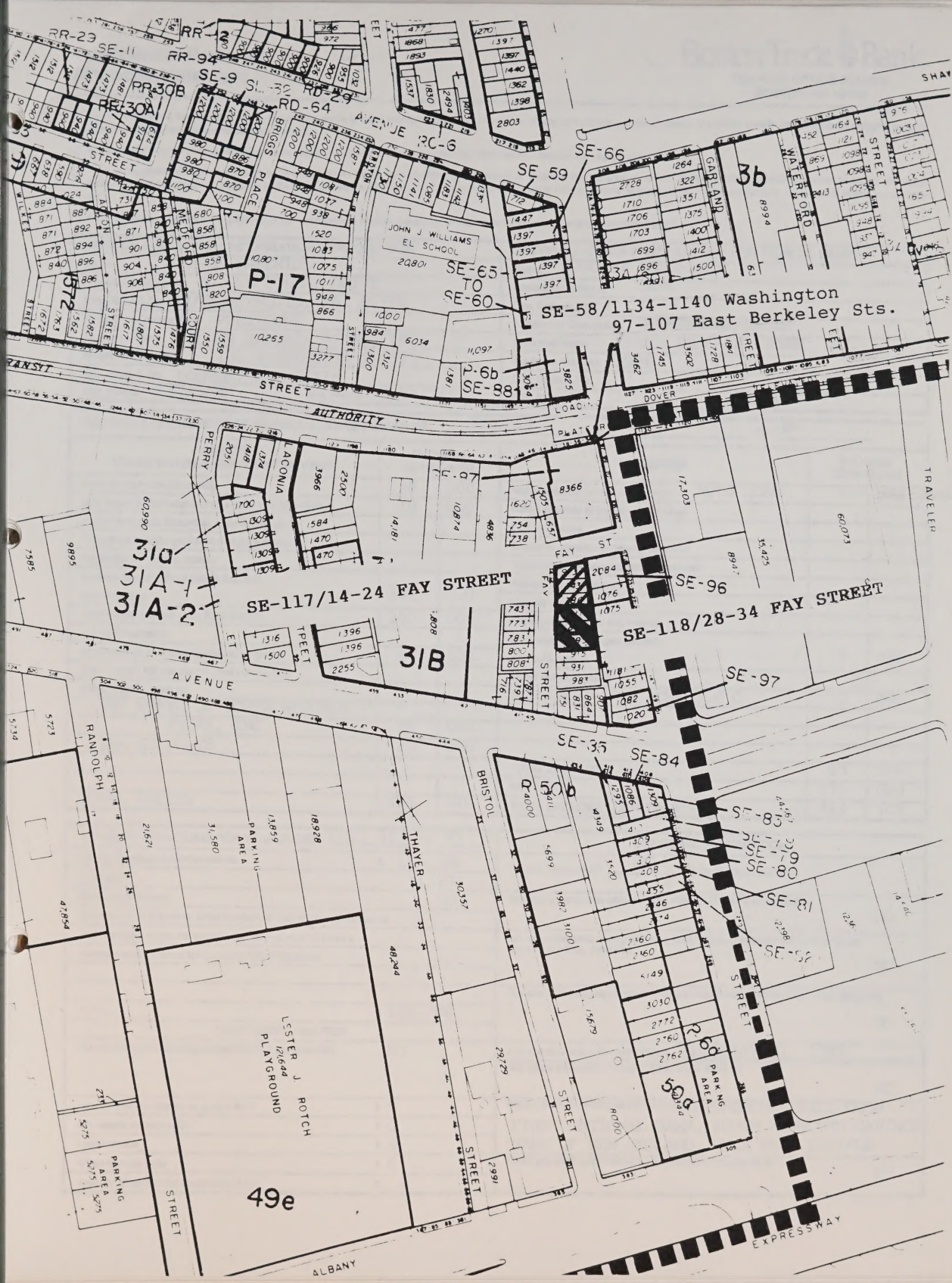
WHEREAS, HUB Building Realty Trust has expressed an interest and submitted a satisfactory proposal for the development of Disposition Parcels SE-58, SE-117, and SE-118 in the South End Urban Renewal Area; and

WHEREAS, the Authority is cognizant of Chapter 30, Sections 61 through 62H of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That HUB Building Realty Trust be and hereby is finally designated as Redeveloper of Parcels SE-58, SE-117, and SE-118 in the South End Urban Renewal Area.
2. That it is hereby determined that HUB Building Realty Trust possesses the qualifications and financial resources necessary to acquire and develop the land in accordance with the Urban Renewal Plan for the Project Area.
3. That disposal of said parcels by negotiation is the appropriate method of making the land available for redevelopment.

4. That Final Working Drawings and Specifications submitted by HUB Building Realty Trust for the development of Parcels SE-58, SE-117, and SE-118, prepared by Moore-Heder Architects, Inc. dated June 12, 1987 and revised February 1, 1988 conform in all respects to the Urban Renewal Plan for the Project Area, and that said Final Working Drawings and Specifications be and hereby are approved.
5. That it is hereby found and determined that the proposed development will not result in significant damage to the environment and further, that all practicable and feasible means and measures have been taken to avoid or minimize damage to the environment.
6. That the Director is hereby authorized for and on behalf of the Authority to execute and deliver a Land Disposition Agreement and Deed conveying Parcels SE-58, SE-117, and SE-118 to HUB Building Realty Trust, said documents to be in the Authority's usual form.
7. That the Director is hereby authorized for and on behalf of the Authority to execute and deliver to HUB Building Realty Trust a License Agreement permitting early entry onto the property for the purpose of performing demolition and/or construction work prior to delivery of the Deed, said Agreement to be in the Authority's usual form.
8. That the Director is hereby authorized and directed for and on behalf of the Authority to execute and deliver such instruments or documents and take any and all actions which the Director deems necessary or appropriate to effectuate the redevelopment of the Project Area.
9. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105(E) of the Housing Act of 1949, as amended, including information with respect to the "Redevelopers' Statement for Public Disclosure" (Federal Form H-6004).



**Confidential Personal
Financial Statement**

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections 1 and 3.
- ☐ If you are applying for joint credit with another person, complete all Sections providing information in Section 2 about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all Sections, providing information in Section 2 about the person whose alimony, support or maintenance payments or income or assets you are relying on.
- ☐ If this statement relates to your guaranty of the indebtedness of other person(s), firm(s) or corporation(s), complete Sections 1 and 3.

SECTION 1 - INDIVIDUAL INFORMATION (TYPE OR PRINT)		SECTION 2 - OTHER PARTY INFORMATION (TYPE OR PRINT)	
Name	MILTON KAMENIDES	Name	DOROTHY KAMENIDES
Residence Address	20 OLD COLONY DRIVE	Residence Address	SAME
City, State & Zip	SOUTH WEYMOUTH, MA 02188	City, State & Zip	
Position or Occupation	PRESIDENT	Position or Occupation	BOOKKEEPER/SALES
Business Name	DOVER BARGAIN STORE, INC.	Business Name	DOVER BARGAIN STORE, INC.
Business Address	1136 WASHINGTON STREET	Business Address	SAME
City, State & Zip	BOSTON, MA 02118	City, State & Zip	
Res. Phone	337-5697	Res. Phone	
Bus. Phone	338-7511	Bus. Phone	

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF <u>OCTOBER 1</u> 19 <u>86</u>				
ASSETS (Do not include assets of doubtful value)		In Dollars (Omit Cents)	LIABILITIES	In Dollars (Omit Cents)
Cash on hand and in banks		168 000	Notes payable to banks - secured <u>AUTO LOAN</u>	4 800
U.S. Gov't & Marketable Securities - see Schedule A		10 000	Notes payable to banks - unsecured	
Non-Marketable Securities - see Schedule B			Due to brokers	
Securities held by broker in margin accounts			Amounts payable to others - secured	
Restricted or control stocks			Amounts payable to others - unsecured	
Partial interest in Real Estate Equities see Schedule C		100 000	Accounts and bills due	
Real Estate Owned - see Schedule D		200 000	Unpaid income tax	
Loans Receivable			Other unpaid taxes and interest	
Automobiles and other personal property		68 500	Real estate mortgages payable - see Schedule D	7 900
Cash value - life insurance - see schedule E			Other debts - itemize:	
Other assets - itemize:			<u>MORTGAGES-SEE SCHEDULE C</u>	72 800
<u>NET WORTH OF DOVER BARGAIN STORE, INC.</u>		89 000		
<u>IRA ACCOUNTS</u>		25 000		
			TOTAL LIABILITIES	85 500
			NET WORTH	575 000
TOTAL ASSETS		660 500	TOTAL LIABILITIES AND NET WORTH	660 500

SOURCES OF INCOME FOR YEAR ENDED <u>DEC. 31</u> 19 <u>85</u>		PERSONAL INFORMATION	
Salary, bonuses & Commissions	\$ 114,300	Do you have a will? <u>NO</u> If so, name of executor	
Dividends	11,400	Are you a partner or officer in any other venture? If so, describe	NO
Real estate income	500	Are you obligated to pay alimony, child support or separate maintenance payments? If so, describe.	NO
Other income (Alimony, child support, or separate maintenance Income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation)		Are any assets pledged other than as described on schedules? If so, describe.	NO
TOTAL	\$ 126,200	Income tax settled through (date) <u>DECEMBER 31, 1985</u>	
CONTINGENT LIABILITIES		Are you a defendant in any suits or legal actions?	NO
Do you have any contingent liabilities? If so, describe	NO	Personal bank accounts carried at <u>MEETINGHOUSE HILL COOP FIRST NATIONAL BANK, SOUTH WEYMOUTH SAVINGS BANK OF NEW ENGLAND, HYDE PARK SAVINGS</u>	
As indorser, co-maker or guarantor?	\$ N	Have you ever been declared bankrupt? If so, describe.	NO
On leases or contracts?	\$ O		
Legal claims	\$ N		
Other special debt	\$ E		
Amount of contested income tax liens	\$ -		

U.S. GOVERNMENT & MARKETABLE SECURITIES

Number of Shares or Face Value (Bonds)	Description	In Name Of	Are These Pledged?	Market Value
10,000	COMMONWEALTH OF MASS BONDS	MILTON & DOROTHY KAMENIDES	NO	10,000

SCHEDULE B - NON-MARKETABLE SECURITIES

Number of Shares	Description	In Name Of	Are These Pledged?	Source of Value	Value
	NONE				

SCHEDULE C - PARTIAL INTERESTS IN REAL ESTATE EQUITIES

Address & Type of Property	Title in Name of	% Of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
3-FAMILY, 1-3 BLVD. TERRACE, ALLSTON	M. KAMENIDES	33	8/85	245,000	300,000	8/2015	218,400
	J. ZUBER						
	E. BONARDI						
		1/3 INTEREST			100,000		72,800

SCHEDULE D - REAL ESTATE OWNED

Address & Type of Property	Title in Name Of	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
1- FAMILY, 20 OLD COLONY DR. SOUTH WEYMOUTH	MILTON & DOROTHY KAMENIDES	9/75	48,000	200,000	8/1995	7,900

SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.S.L.I. AND GROUP INSURANCE

Name Of Insurance Company	Owner Of Policy	Beneficiary	Face Amount	Policy Loans	Cash Surrender Value
CONNECTICUT MUTUAL	MILTON KAMENIDES	DOROTHY KAMENIDES	250,000	-0-	EST 4,000
MONY	SAME	SAME	60,000	6,000	-0-
FEDERAL KEMPER LIFE	SAME	SAME	175,000	-0-	-0-
VARIOUS	MILTON OR DOROTHY	MILTON OR DOROTHY	15,000	-0-	-0-

SCHEDULE F - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

Name & Address Of Lender	Credit In The Name Of	Secured Or Unsecured	Original Date	High Credit	Current Balance
FIRST NATIONAL BANK	MILTON KAMENIDES	SECURED	10/85	100,000	LINE -0-
FIRST NATIONAL BANK-VISA	SAME	UNSEC		2,000	LINE -0-
FIRST NATIONAL BANK-MASTERCARD	SAME	UNSEC		2,000	LINE -0-
MASTER CARD-GOLD CARD	SAME	UNSEC		5,000	LINE -0-

The information contained in this statement is provided for the purpose of obtaining, or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guaranty in your favor. Each undersigned understands that you are relying on the information provided herein (including the designation made as to ownership of property) in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our creditworthiness. You are authorized to answer questions about your credit experience with me/us.

Date signed Jun 15, 1987

8-208 (Rev)

Signature (Individual) Milton Kamenides
 S.S. No. 026-32-5010 Date of Birth 3/6/41
 Signature (Other Party) Dorothy E. Kamenides
 S.S. No. 011-30-1018 Date of Birth 8/20/39

**Confidential Personal
Financial Statement**

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections 1 and 3.
- ☐ If you are applying for joint credit with another person, complete all Sections providing information in Section 2 about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all Sections, providing information in Section 2 about the person whose alimony, support or maintenance payments or income or assets you are relying on.
- ☐ If this statement relates to your guaranty of the indebtedness of other person(s), firm(s) or corporation(s), complete Sections 1 and 3.

SECTION 1 - INDIVIDUAL INFORMATION (TYPE OR PRINT)		SECTION 2 - OTHER PARTY INFORMATION (TYPE OR PRINT)	
Name	BERNARD POLISSKIAN	Name	RHADA L POLISSKIAN (WIFE)
Residence Address	19 PLACIDITY LANE	Residence Address	
City, State & Zip	FRAMINGHAM MA 0170	City, State & Zip	
Position or Occupation	EXECUTIVE	Position or Occupation	SALES - PART TIME
Business Name	PRIMAN MER CO.	Business Name	
Business Address	1140 WASHINGTON ST	Business Address	
City, State & Zip	BOSTON MA 02118	City, State & Zip	
Res. Phone	577-6028	Res. Phone	
Bus. Phone	542-2842	Bus. Phone	

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF 19							
ASSETS (Do not include assets of doubtful value)		In Dollars (Omit Cents)		LIABILITIES		In Dollars (Omit Cents)	
Cash on hand and in banks		110	300	Notes payable to banks - secured			
U.S. Gov't & Marketable Securities - see Schedule A		26	200	Notes payable to banks - unsecured			
Non-Marketable Securities - see Schedule B		54	000	Due to brokers			
Securities held by broker in margin accounts				Amounts payable to others - secured			
Restricted or control stocks				Amounts payable to others - unsecured			
Partial interest in Real Estate Equities see Schedule C				Accounts and bills due		1300	
Real Estate Owned - see Schedule D		350	220	Unpaid income tax		20	000
Loans Receivable				Other unpaid taxes and interest			
Automobiles and other personal property		25	000	Real estate mortgages payable - see Schedule D		48	900
Cash value - life insurance - see schedule E				Other debts - itemize			
Other assets - itemize:							
INDIVIDUAL RETIREMENT ACCTS.		32	600				
EQUITY IN PRIMAN MER							
CO. PROFIT SHARING PLAN		326	100				
EQUITY IN PRIMAN MER				TOTAL LIABILITIES		70	100
CO (110 SHARES)		176	000	NET WORTH		965	100
TOTAL		1036	200	TOTAL LIABILITIES AND NET WORTH		1035	200

SOURCES OF INCOME FOR YEAR ENDED DEC 1986		PERSONAL INFORMATION	
Salary, bonuses & Commissions	\$ 148000	Do you have a will?	YES If so, name of executor Rita DA
Dividends		Are you a partner or officer in any other venture? If so, describe	NO
Real estate income		Are you obligated to pay alimony, child support or separate maintenance payments? If so, describe	NO
Other income (Alimony, child support, or separate maintenance)		Are any assets pledged other than as described on schedules? If so, describe.	NO
Income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation)		Income tax settled through (date)	
		Are you a defendant in any suits or legal actions?	NO
TOTAL	\$	Personal bank accounts carried at:	
CONTINGENT LIABILITIES		FRAMINGHAM SAVINGS,	
Do you have any contingent liabilities? If so, describe.	NO	FRAMINGHAM TRUST	
As indorser, co-maker or guarantor?	\$	Have you ever been declared bankrupt? If so, describe.	
On leases or contracts?	\$	NO	
Legal claims	\$		
Other special debt	\$		
Amount of contested income tax liens	\$		

SCHEDULE A - U.S. GOVERNMENT & MARKETABLE SECURITIES

Number of Shares or Face Value (Bonds)	Description	In Name Of	Are These Pledged?	Market Value
700	ISRAEL BONDS	POTSCHEMAN	NO	700
20,000	NUVEEN MUNI BOND FUND	"	NO	20,000
30,000	PAINE WEBBER MUNI BONDS	"	NO	30,000
111	MAGELLAN FUND	"	NO	5500

SCHEDULE B - NON-MARKETABLE SECURITIES

Number of Shares	Description	In Name Of	Are These Pledged?	Source of Value	Value
ANNUITY	NAND - LIFE	BATRP	NO		35,000
ANNUITY	HOME LIFE	BATRP	NO		19,000

SCHEDULE C - PARTIAL INTERESTS IN REAL ESTATE EQUITIES

Address & Type of Property	Title In Name of	% Of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount

SCHEDULE D - REAL ESTATE OWNED

Address & Type Of Property	Title In Name Of	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
HOME - 19 BLACKETT LN FRAMINGHAM MA	BATRP	1968	33,000	225,000	1993	89,000
CANDY - SEA OAKS NASHUA, MA	BATRP	1986	80,000	135,000	2001	40,000

SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.S.L.I. AND GROUP INSURANCE

Name Of Insurance Company	Owner Of Policy	Beneficiary	Face Amount	Policy Loans	Cash Surrender Value
LIFE INS.	BATRP		85,000		
GROUP INS.	BATRP		50,000		

SCHEDULE F - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

Name & Address Of Lender	Credit In The Name Of	Secured Or Unsecured	Original Date	High Credit	Current Balance
FRAMINGHAM TRUST CO					
FRAM SAVINGS BANK					

The information contained in this statement is provided for the purpose of obtaining, or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guaranty in your favor. Each undersigned understands that you are relying on the information provided herein (including the designation made as to ownership of property) in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our creditworthiness. You are authorized to answer questions about your credit experience with me/us.

Signature (Individual) Bernard Potuchman
 S.S. No. 032-20-3354 Date of Birth 4/30/28
 Signature (Other Party) Rhonda Potuchman
 S.S. No. 038-26-3691 Date of Birth 10/1/32

Date signed JAN. 12 19 87

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Financial Statement**

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- ☐ If you are applying for joint credit with another person, complete all Sections providing information in Section 2 about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all Sections, providing information in Section 2 about the person whose alimony, support or maintenance payments or income or assets you are relying on.
- ☐ If this statement relates to your guaranty of the indebtedness of other person(s), firm(s) or corporation(s), complete Sections 1 and 3.

SECTION 1 - INDIVIDUAL INFORMATION (TYPE OR PRINT)		SECTION 2 - OTHER PARTY INFORMATION (TYPE OR PRINT)	
Name	JOSEPH I. PRAMAN	Name	
Residence Address	27 BROADLAWN DRIVE	Residence Address	
City, State & Zip	NEWTON, MA 02167	City, State & Zip	
Position or Occupation	EXECUTIVE - PRAMANARCO	Position or Occupation	
Business Name		Business Name	
Business Address		Business Address	
City, State & Zip		City, State & Zip	
Res. Phone	Bus. Phone 542-2505	Res. Phone	Bus. Phone

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF <u>DECEMBER 31</u> 19 <u>86</u>				
ASSETS (Do not include assets of doubtful value)		In Dollars (Omit Cents)	LIABILITIES	In Dollars (Omit Cents)
Cash on hand and in banks		5 000	Notes payable to banks - secured	99 000
U.S. Gov't & Marketable Securities - see Schedule A			Notes payable to banks - unsecured	
Non-Marketable Securities - see Schedule B			Due to brokers	
Securities held by broker in margin accounts			Amounts payable to others - secured	28 000
Restricted or control stocks			Amounts payable to others - unsecured	
Partial interest in Real Estate Equities see Schedule C			Accounts and bills due	1 000
Real Estate Owned - see Schedule D	1,197	500	Unpaid income tax	
Loans Receivable			Other unpaid taxes and interest	
Automobiles and other personal property	25	000	Real estate mortgages payable - see Schedule D	587 000
Cash value - life insurance - see schedule E	11	000	Other debts - itemize:	
Other assets - itemize: IRN ACCT	9	000		
DEPOSITS ON REAL ESTATE	6	500		
EQUITY IN PRAMAN MARCO				
PROFIT SHARING PLAN	134	000		
EQUITY IN PRAMAN MARCO (90 SHARES)	145	000		
	6,533	000	TOTAL LIABILITIES	1,665 000
			NET WORTH	868 000
			TOTAL LIABILITIES AND NET WORTH	1,533 000

SOURCES OF INCOME FOR YEAR ENDED <u>12/31</u> 19 <u>86</u>		PERSONAL INFORMATION	
Salary, bonuses & Commissions	\$ 120,000	Do you have a will? _____ If so, name of executor	
Dividends		Are you a partner or officer in any other venture? If so, describe	NO
Real estate income	20,000	Are you obligated to pay alimony, child support or separate maintenance payments? If so, describe	NO
Other income (Alimony, child support, or separate maintenance)		Are any assets pledged other than as described on schedules? If so, describe	NO
Income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation)		Income tax settled through (date)	
		Are you a defendant in any suits or legal actions?	NO
TOTAL	\$	Personal bank accounts carried at:	
CONTINGENT LIABILITIES			
Do you have any contingent liabilities? If so, describe	NO		
As indorser, co-maker or guarantor?	\$ NO		
On leases or contracts?	\$ NO		
Legal claims	\$ NO		
Other special debt	\$ NO		
Amount of contested income tax liens	\$ NO		
		Have you ever been declared bankrupt? If so, describe	NO

SCHEDULE - U.S. GOVERNMENT & MARKETABLE SECURITIES

Number of Shares or Face Value (Bonds)	Description	In Name Of	Are These Pledged?	Market Value

SCHEDULE B - NON-MARKETABLE SECURITIES

Number of Shares	Description	In Name Of	Are These Pledged?	Source of Value	Value

SCHEDULE C - PARTIAL INTERESTS IN REAL ESTATE EQUITIES

Address & Type of Property	Title In Name of	% Of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount

SCHEDULE D - REAL ESTATE OWNED

Address & Type Of Property	Title In Name Of	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
27 BROADWAY NEWTON	J. P. PARRAN	1983		325,000		59,000
1101 LA GRANGE STREET NEWTON		1985		260,000		113,000
1210 NEW RENT W. FOXGROVE 1/2		1985		175,000		128,000
1208 " " " "		1985		175,000		104,000
#222 THE FAIRWAYS NEWTON		1985		350,000		247,000

SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.S.L.I. AND GROUP INSURANCE

Name Of Insurance Company	Owner Of Policy	Beneficiary	Face Amount	Policy Loans	Cash Surrender Value

SCHEDULE F - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

Name & Address Of Lender	Credit In The Name Of	Secured Or Unsecured	Original Date	High Credit	Current Balance
NEW WORLD BANK	JOSEPH I. PARRAN	SECURED			49,000
BANK OF BOSTON					
BOSTON FIVE					
FAVE HILL CREDIT UNION					
1ST AMERICAN					

The information contained in this statement is provided for the purpose of obtaining, or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guaranty in your favor. Each undersigned understands that you are relying on the information provided herein (including the designation made as to ownership of property) in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our creditworthiness. You are authorized to answer questions about your credit experience with me/us.

Signature (Individual) Joseph I. Parran

S.S. No. 012383017 Date of Birth 4-22-50

Signature (Other Party) _____

S.S. No. _____ Date of Birth _____

Date signed 1/13 19 86

February 8, 1988

Mr. Milton Kamenides
Mr. Joseph Proman
Mr. Bernard Potischman
c/o Zarelli Doney Associates, Inc.
175 Portland Street
Boston, MA 02114

Re: "The Hub Building", 1134 Washington Street, Boston, MA

Dear Messrs. Kamenides, Proman and Potischman:

We are in receipt of your first mortgage loan application regarding the above captioned property. Based on our preliminary review, we would be willing to process your request subject to the following loan terms:

Mortgage Loan Amount: \$1,709,500

Interest Rate:

Construction Loan: 1.25% above the Newworld
Corporate Base Lending Rate, adjusted monthly.

Permanent Loan: Upon completion of the proposed improvements and reduction of the loan balance by a principal paydown in the amount of \$602,995, the interest rate will be reduced to 1.00% above the Newworld Corporate Base Lending Rate, adjusted monthly, with a one-time option to convert during the first year (provided the loan is fully advanced) to a rate fixed at 250 basis points over Newworld Bank's cost of funds utilizing borrowings from Federal Home Loan Bank of Boston (FHLBB) subject to availability of funds.

Term:

Construction Loan: one year.
Permanent Loan: four year.

Amortization:

Interest only during construction loan (one year), thereafter 25 year schedule.

Origination Fee:

1% of the loan amount.

Prepayment Provision:

The greater of 1% or that amount if any, assessed the bank by FHLBB. If the loan is on a variable rate basis, the prepayment provision shall equal 1% for the first year only.

Accounts:

Tax Escrow and Building Operating Accounts to be maintained at Newworld Bank.

Guarantees: Joint and several guarantees of Milton Kamenides, Joseph Proman and Bernard Potischman.

Holdback: Funds to be advanced on a mutually agreed upon schedule.

Partial Release Fee: .50% of principal payment per unit conveyance.

Should the loan be approved, our commitment will require the submission of a site assessment report satisfactory to the Bank addressing all issues associated with Massachusetts General Laws, Chapter 21E. Said report shall be reviewed and approved by an engineer satisfactory to Lender; all costs in connection with engineer review shall be borne by applicant.

To initiate processing, we require an application fee of \$1,710. Such fee shall be refundable only in the event that the Bank is unable to issue a loan commitment in accordance with the above terms. Otherwise, this fee will be credited toward that portion of the origination fee required at the time of your acceptance of the loan commitment.

Kindly indicate your acknowledgment and assent by signing and returning the enclosed copy of this letter along with the required application fee by February 16, 1988.

Very truly yours,

Richard C. Muraida

Richard C. Muraida
Assistant Vice President

Accepted by: *Bernard Potischman*

Date: *FEBRUARY 9 1988*

Milton Kamenides 2/9/88

The Provident Institution for Savings in the Town of Boston
December 17, 1987

Artist Tenants of the South End
486 Harrison Avenue
Boston, MA 02118

Dear Gentlemen:

We are pleased to advise you that The Provident Institution for Savings ("The Provident") (the "Lender") has approved your application for a construction/permanent loan (the "Loan") to be secured by two to-be-formed condominium units containing 16,128 s.f. located at 1134 Washington Street, Boston, MA.

The Loan is subject to the following terms and conditions:

1. BORROWER: Artist Tenants of the South End
2. AMOUNT OF LOAN: \$732,500
3. TERM: The term of the Loan will be for five years from the date of closing, comprised of a six-month construction loan and a 4 1/2-year permanent loan.
4. INTEREST RATE: The loan shall initially bear interest at the rate of the Connecticut National Bank Prime plus one percent (1%) per annum based on a 360-day year adjusted on a daily basis. "Connecticut National Bank Prime" shall mean the interest rate from time to time announced by the Connecticut National Bank as being its prime rate on commercial loans.

At the borrower's option, the loan may be locked in after the six-month construction loan at the rate of 200 basis points over the Federal Home Loan Bank of Boston's advance rate to member banks for the cost of money corresponding to the remaining term of the loan.
5. COMMITMENT FEE: A one percent (1%) non-refundable commitment fee of \$7,325 is payable on this Commitment, \$6,750 of which has previously been paid, and \$575 which will be paid at closing.
6. INTEREST RESERVE: \$32,000 to be withheld from the principal to be employed, periodically, to satisfy such payments of interest as may be required by the terms hereof and to the extent so employed to be considered as advancements of principal. When this is depleted, Borrower is responsible for interest when due.
7. REPAYMENT: Interest during the six-month construction loan is payable monthly in arrears on the then outstanding principal balance, commencing on the first day of the first month following the first disbursement of the Loan.

The Provident Institution for Savings in the Town of Boston

After the six-month construction period, monthly payments of principal and interest based upon a twenty-five (25) year amortization plan shall be made for a period equal to the remaining term of the loan. The remaining principal balance will be due at the end of the fifth year. All payments shall be applied first to late charges, if any, then to interest, and then to principal when due.

8. LATE PAYMENT: Any payment received more than ten (10) days after its due date shall be subject to an additional charge of five percent (5%) of the amount due.
9. INTEREST AT MATURITY OR DEFAULT: Interest after maturity or default shall be at the rate of Connecticut National Bank Prime plus five percent (5%).
10. PREPAYMENT: This Loan may be prepaid during a variable rate period at any time without penalty. The loan may be prepared in a fixed rate period upon payment of a fee which is equal to the penalty assessed by The Provident by The Federal Home Loan Bank as a result of the prepayment. No partial payments shall be permitted.
11. GUARANTORS: Payment and performance of the Loan and completion of the improvements shall be jointly, severally, and unconditionally guaranteed by the eleven artists as follows: Sarah Hutt, Mary Sherwood, Jeff Hull, Deborah Kamy Hull, William Remick, Peter Hoyle, Shelley Loheed, David Kelley, John McNamara, Kim Pashko, and Robert Piasecki
12. SECURITY: The Loan shall be secured by a valid first lien upon the fee simple title in the upper two floors of condominium units located at 1134 Washington Street, Boston, MA, and together with all present and future improvements, fixtures, and equipment to be constructed or placed thereon. The final legal description of the Premises must be approved by the Lender and its counsel.
13. LOAN DOCUMENTS: Borrowers shall execute and deliver the following documents, all in form and content satisfactory to The Provident:
 - a. Note.
 - b. Mortgage.
 - c. Security Agreement and UCC-1 Financing Statements.
 - d. Collateral Assignment of Leases and Rentals.
 - e. Collateral assignment of construction and architect's contracts. A collateral assignment to Lender of Borrower's rights under any construction contract or agreement with any architect retained by in connection with the Project and its rights with respect to the plans and specifications therefore, which assignment shall

The Provident Institution for Savings in the Town of Boston

provide that in the event of default by Borrower under the Loan documents, Lender or its nominee will be allowed to use any plans and specifications prepared by any such architect, in the completion of the Project, regardless of whether such architect continues to be employed in connection with the Project.

f. Collateral assignment of permits and developer's rights. A collateral assignment to Lender of any and all development rights of Borrower in or relating to the Project and of all permits, licenses, consents, and approvals issued or to be issued by any governmental or private authority or agency relating to the construction, furnishings, ownership, use, occupancy, or operation of the Project.

g. Collateral assignment of other documents. Collateral assignment to Lender of any other loan commitment, lease, license, concession, contract, or other agreement now or hereafter existing and pertaining to the construction, furnishing, use, occupancy, or operation of the Project, which shall provide that in the event of default by Borrower under the Loan documents, Lender or its nominee shall have the right at its option to the benefits under the foregoing.

h. Other Documents. Such other documents, instruments, assignments, and estoppels as Lender shall require, including, without limitation, a guaranty executed by the Guarantor, estoppel certificates, consents to assignment, and subordination and attornment agreements from any tenant or other third party in connection with the Project, all containing such terms and condition as Lender shall require.

14. LENDER'S COUNSEL: John R. Walkey, Choate Hall and Stewart, 53 State Street, Boston, MA 02109, (617) 227-5020.

15. LENDER'S INSPECTOR: Ziner and Rossetti, Waltham, MA, (617) 647-9616.

16. CONDITIONS PRECEDENT: At least seven (7) days prior to the closing of the Loan, Borrower shall furnish Lender the following, at Borrower's expense, which shall constitute conditions precedent to closing the Loan, in addition to any other documents required herein:

a. If Borrower is a partnership, a copy of Borrower's partnership agreement and the certificate or other documents, if any, required to be filed with any governmental agency to validate Borrower's status as a partnership;

-or-

if Borrower is a corporation, a corporate resolution authorizing the making of the Loan and a Certificate of Good Standing;

-or-

if Borrower is a trust, appropriate proof of authority of Trustees to execute loan documents.

The Provident Institution for Savings in the Town of Boston

b. Legal opinion by Borrower's attorney as to the following:

- (i) Borrower and/or Guarantor is a validly existing partnership or corporation under the laws of the State of Massachusetts, if the Borrower and/or Guarantor is a partnership or corporation.

-or-

Borrower is existing under the laws of the jurisdiction of its formation, with adequate power to enter into the Loan and for the Trustees to execute the Loan documents.

- (ii) The Loan documents are duly authorized and constitute valid, binding, and enforceable agreements in accordance with their respective terms, subject only to any applicable bankruptcy, insolvency, reorganization, and moratorium law, or other laws affecting creditors' remedies generally.
- (iii) The Project shall, when completed in accordance with the plans and specifications approved by Lender, comply with all requirements of all laws, ordinances, rules, regulations, covenants, and restrictions affecting the construction, occupancy, use, and operations thereof.
- (iv) Borrower has obtained all permits, licenses, and other government approvals necessary for the construction of the entire Project.
- (v) There is no outstanding or threatened litigation, administrative, or other proceedings, the outcome of which could materially and adversely affect the Borrower or Guarantor.
- (vi) Such other matters as Lender may reasonably require.

c. Additional legal opinions from law firms satisfactory to Lender covering any and all matters which Lender in its sole discretion deems necessary, including, but not limited to, questions of title, insurance, interest, usury, zoning, environmental laws and regulations, and other federal, state, county, and municipal laws, rules, and regulations applicable to the Project.

d. Evidence that all of Borrower's and Guarantor's obligations are current and not in default and that the Loan will not violate or be in conflict with or constitute a default under any such obligations; consents from all obligees under or guarantors of such obligations; agreement subordinating to Lender the obligations of Borrower to its partners and/or corporate officers and providing that no payment of principal or interest on such obligations shall be made without the prior written consent of Lender.

e. Standard American Land Title Association (ALTA) Mortgagee's

The Provident Institution for Savings in the Town of Boston

Title Policy or Binder, whichever is designated by Lender. The policy or binder must insure the full amount of the Loan and must be in a form acceptable to Lender and its counsel. The policy must be issued by a title company which has been previously approved by Lender and must insure Lender against all mechanics' and materialmen's liens, with no exceptions for matters of survey, parties in possession, or taxes other than those not yet due and payable. Any title exceptions shall be subject to Lender's approval.

- f. Borrower must furnish to the Lender the following:

An affidavit in form and substance satisfactory to the Lender from the Borrower and the past owners of the Premises (if reasonably available) relating to use of the Premises, the existence and/or use of hazardous materials at the Premises, inspections conducted and/or to be conducted at the Premises by the Massachusetts Department of Environmental Protection and/or other appropriate governmental or administrative bodies. Upon review of this affidavit, Lender may require a satisfactory site history report or a site assessment report.

-or-

The site history uses of the Premises in form and in substance satisfactory to the Lender. Based on the results of the site history the Lender may further require the receipt of a satisfactory hazardous waste site assessment of the Premises from an engineer approved by Lender. The engineer may require that soil borings be conducted at the Premises.

-or-

A current Site Assessment Report acceptable to the Lender, which is complete and free of qualification, prepared by qualified engineers acceptable to the Lender. Such report shall disclose that the real estate offered as security for the Loan is free of oil or hazardous substances or waste materials, as defined by the Superfund Amendments and Reauthorization Act of 1986 and applicable state legislation.

- g. A Standard American Land Title Association (ALTA) survey and licensed surveyor's certificate dated not more than six (6) months prior to closing. The survey shall show the dimensions and total square foot area of the Premises (with field notes attached giving a full legal description, interior lot lines, if any, the dimensions and location of the buildings and improvements, setback lines and encroachments, if any, the location of adjoining streets, and the distance to a name of the nearest intersecting street). An updated survey and licensed surveyor's certificate shall also be furnished to Lender within a reasonable time after a request.
- h. Evidence satisfactory to Lender that the Premises and the Project comply with all appropriate zoning, subdivision, building, environmental, pollution and other governmental laws.

The Provident Institution for Savings in the Town of Boston

statutes, judicial decisions, rules, regulations, and requirements, and that the Premises are presently zoned for the project.

- i. All permits, certificates, consents, licenses, and approvals necessary from the appropriate governmental or private authorities or agencies for the construction of the Project and the full use, occupancy, and operation of the Project after completion of construction. If any of such permits, certificates, consents, licenses, or approvals cannot by law be obtained prior to the initial disbursement of Loan proceeds or completion of construction, the Borrower shall provide Lender with evidence establishing to its satisfaction that Borrower will be able and qualified to obtain such permit, certificate, consent, licenses, or approval at the appropriate stage of construction.
- j. Satisfactory boundary surveys, topographical surveys, other engineering tests deemed necessary by Lender, site plans, copies of city zoning codes and city zoning maps, and evidence as to the availability of all normal public utilities.
- k. An appraisal of the Premises satisfactory to Lender in all respects, dated not more than sixty (60) days prior to closing and prepared by an appraiser acceptable to Lender, evidencing value of at least the acquisition/renovation cost of \$895,500.
- l. Current sworn financial statements of Borrowers and Guarantors, reflecting such financial information and condition, assets, liabilities, and net worth of the Borrower and each Guarantor, satisfactory to Lender.
- m. Evidence of the infusion of equity into the Project by Borrower as may be required by Lender.
- n. Other documents required to carry out the provisions and intent of this Commitment.

17. CONDOMINIUM REQUIREMENTS:

- a. Condominium Documentation: The Project must comply with all requirements for the creation and submission of a condominium under Massachusetts law, and all condominium documentation (including, but not limited to, the public offering statement, declaration, surveys, plans, management agreement, trust agreement, bylaws, rules and regulations and budget of the relevant condominium association) must be satisfactory in form and substance to Lender in its sole discretion.
- b. Required Documents: Lender shall also require a title insurance company satisfactory to Lender to commit in writing to the issuance of both owners' and mortgagees' title insurance

The Provident Institution for Savings in the Town of Boston

policies with condominium endorsements, which policies and endorsements shall be in form and substance satisfactory to the Lender. Lender shall also require that a condominium endorsement to the title insurance policy be issued to Lender's title insurance policy upon the recording of the initial declaration of condominium as well as after the recording of any amendment to the declaration thereafter.

Lender shall also require the execution by the Borrower in favor of the Lender of a separate mortgage deed, security agreement and UCC Financing Statements relating to the grant by Borrower to Lender of a security interest in any and all Special Declarant Rights, including, but not limited to, Development Rights, that the Borrower may possess as declarant of the Condominium. Neither declarant nor the relevant condominium association shall be permitted to amend the declaration, convey or encumber any of the common elements within the condominium, assign future income of the condominium association, including, but not limited to, common expense assessments, or cause additional improvements on the common elements without the Lender's prior written consent. All surveys, plans, declarant's and architect's/engineer's certificates, and warranty deeds must comply with all requirements of the Act.

18. INSURANCE: Until the Loan is paid in full, Borrower shall obtain and maintain in effect insurance coverage as follows:

An original physical damage hazard insurance policy or policies written on a Builder's Risk, Completed Value, non-reporting form, which shall include coverage therein for "completion and/or premises occupancy" in a format and insuring company or companies satisfactory to the Lender. The original policy or policies containing a mortgage clause naming the Lender as mortgagee shall be supplied the Lender together with a paid, receipted bill for no less than one annual premium.

The amount of insurance shall be in sufficient amounts to prevent the application of any insurance policy co-insurance contribution on any loss but shall in no event be less than the full face amount of the Loan. Provisions for a thirty-day advance notice to Lender of policy cancellation or material change shall be contained within the policy or policies.

Coverage included within the policy or policies insuring the subject property shall not be less than that encompassed by "Fire, Extended Coverage, and Vandalism and Malicious Mischief" perils broadened to include the so-called "All Risk of Physical Loss."

The Lender reserves the right herein when it seems necessary to request additional physical damage hazard insurance such as, but not limited to:

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- a. Flood, including surface waters;
- b. Earthquake, including subsidence;
- c. Collapse due to faulty construction and/or error in design or faulty workmanship; and
- d. Contingent liability from operation of any building loss pertaining to non-conforming property.

The Lender will additionally be supplied with evidence of Comprehensive General Liability Insurance covering the subject property in an amount of no less than \$1,000,000 Bodily Injury and/or Property Damage Liability per occurrence. Such certification shall be in the form of a Certificate of Insurance in favor of the mortgagee, allowing therein for an obligatory thirty-day advance notice of policy cancellation or material change to the mortgage.

The Borrower will be responsible for all insurance requirements contained herein, notwithstanding the subsequent transfer of same to other parties such as, but not limited to, Lease of Premises Agreements. Nothing contained within such "transfers" shall relieve the Borrower of any required insurance documentation.

Any failure on the part of the Lender to secure physical evidence of any insurance required herein shall not relieve the Borrower of its responsibilities.

Furthermore, the Lender is authorized and empowered, at its sole option, to collect and receive, or cause to be collected and received for its account, the proceeds from any insurance policy covering the Premises. Said proceeds shall be held and expended at Lender's sole option, for the repair, restoration, or rebuilding of the Premises or applied toward the outstanding principal of the Loan.

19. FLOOD INSURANCE: The Provident shall be provided with satisfactory evidence as to whether or not the security is located in an area designated by the U. S. Department of Housing and Urban Development (HUD) as having special flood or mudslide hazards. If the premises are located in such an area, Borrower shall furnish satisfactory policies of flood insurance covering the Premises.
20. CONDITIONS TO DISBURSEMENT: In addition to the execution, delivery, and, where appropriate, the recording or filing of the Loan documents and the satisfaction of the other terms and conditions set forth herein, the obligation of the Lender to disburse any of the Loan proceeds shall be subject to compliance and satisfaction of the following terms, covenants, and conditions, each of which shall be satisfied and delivered to Lender, at Borrower's expense, at least ten (10) days prior to disbursement, and each of which shall be in all respects in form, scope, and substance satisfactory to Lender:

The Provident Institution for Savings in the Town of Boston

- a. Project Cost Analysis. Borrower shall have submitted, and Lender and an inspector designated by Lender ("the Inspector") shall have approved, a detailed full cost budget for the Project specifying on a line-item-by-line-item basis all hard and soft costs that are necessary and sufficient for the final completion of the construction and furnishing of the Project and otherwise necessary to make the Project ready for its full use, occupancy, and operation, and such additional amounts that are necessary and sufficient to offset estimated operating deficits until the time when the Project is expected to reach profitability after opening for business.
- b. Plans and Specifications. Borrower shall have submitted, and Lender and the Inspector shall have approved, detailed plans and specifications for the Project, including the interior design and planning thereof (the "Plans and Specifications"), stamped and certified as true and correct by the architect, engineer, designer, or planner who has prepared the same and stamped and approved by all necessary governmental and private authorities and agencies.
- c. Construction Contracts. Borrower shall have entered into, and Lender and the Inspector shall have approved, contract, agreements, and purchase orders (the "Construction Contracts") for the complete and full construction and equipping of the Project in accordance with the Plans and Specifications and F & E Schedule, including a general contract (the "General Contract") with a general contractor (the "General Contractor") approved by Lender, at fixed or guaranteed maximum prices not exceeding the line item cost categories and sub-categories in the Project Cost Analysis, with such contractors and suppliers approved by Lender. Any changes in construction contracts must be approved by Lender.
- d. Subcontractors. Borrower shall have submitted and Lender and the Inspector shall have approved a list of subcontractors for the Project.
- e. Architectural Contracts. Borrower shall have entered into and Lender shall have approved contracts or agreements with architects, engineers, designers, and planners to provide the architectural, engineering, and design services required for completion and furnishing of the Project, with such architects, engineers, designers and planners as are approved by Lender.
- f. Architect's Certificate. Lender shall have received Certificates of Borrower's Architects and Engineers containing a detailed listing and description of the Plans and Specifications and certifying to the effect that: (i) when completed, the Project will comply with all currently applicable laws, ordinances, rules, and regulations, and with all covenants, conditions, easements, and restrictions to which the Project is

The Provident Institution for Savings in the Town of Boston

subject; (ii) that any and all required licenses, certificates, consents, and permits for, and approvals of, the Project and the Plans and Specifications have been issued by all governmental and private authorities and agencies having jurisdiction thereof; (iii) that there is adequate and sufficient water, storm sewer, sanitary sewer, gas, electrical, and telephone service available to the Project without the necessity of any off-site improvements and without the necessity of any on-site improvements other than those provided for in the approved Plans and Specifications and the Project Cost Analysis; and (iv) that the amounts put forth in the Project Cost Analysis are adequate and sufficient for final completion and furnishing of the Project.

g. Report of Lender's Inspector. Lender shall have received a report satisfactory to Lender from the Inspector approving the Plans and Specifications, Project Cost Analysis, Construction Schedule, Construction Contracts, and such other construction documentation and information furnished to Lender in connection with the Project.

h. Equity Contribution. Borrower shall have contributed and infused such total amount of equity capital to the Project as Lender shall have required.

21. CONSTRUCTION LOAN DISBURSEMENT PROCEDURE: Loan proceeds will be advanced no more frequently than once every thirty (30) days, upon presentation of a proper request satisfactory to and approved by Lender, as the work progresses based upon satisfactory certification by the Inspector and paid receipts. Disbursement will be made at the sole discretion of Lender, no sooner than five working days after receipt of a proper and documented request for funds.
22. PROGRESS INSPECTIONS: Lender will require that regular progress and quality inspections be made at Borrower's expense by an Inspector who will analyze each request for funds and submit a recommendation to Lender.
23. ADDITIONAL FUNDS AND HOLDBACK OF EXCESS FUNDS: In the event the analyzed and approved cost breakdowns exceed the amount of the Commitment, Borrower will be required to provide Lender with satisfactory evidence that funds in the amount of such excess have been advanced by Borrower in a form acceptable to Lender, or that such shortage in funds will be made up by Borrower in a manner acceptable to Lender. If at any time during construction, Lender shall determine that the Loan proceeds remaining to be advanced will not be sufficient to complete the Project in accordance with approved Plans and Specifications, Borrower shall be required to advance funds in the amount of such shortage, as determined by Lender, before Lender shall have any further obligation to advance any remaining Loan proceeds. In the event the total cost actually incurred is less than the maximum principal amount to be advanced

The Provident Institution for Savings in the Town of Boston

under the Loan, the Lender shall not be obligated to disburse any advances exceeding the actual cost incurred, notwithstanding anything herein to the contrary.

24. RETAINAGE: The Loan documents will require that Borrower agrees to pay the Project's various subcontractors only ninety percent (90%) of the total amount due them for construction work completed at the time of each request for the advance of funds. Lender will maintain a ten percent (10%) holdback as to all construction work and may withhold approval of final payment until satisfactory evidence has been presented that all the work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and that all requisite certificates or occupancy and any and all other certificates generally issued by affected governmental units in connection with new construction have been validly issued. The amounts held back will be released with the final advance, except that when Lender has approved the work of a subcontractor whose contract has been completed, the retainage applicable to that subcontractor will be released upon request.
25. PROCEEDS/COMMENCEMENT: Loan proceeds shall be used solely for the direct and indirect costs to develop the Premises and construct the Project as approved by Lender and for no other purposes. Borrower shall commence construction promptly upon closing the Loan and will proceed with due diligence to promptly complete the Project.
26. CERTIFICATE OF OCCUPANCY: Borrower agrees to obtain a Certificate of Occupancy within thirty (30) days of completion of the Project. Completion shall be certified by the Inspector and final inspection certification shall be furnished by all governmental authorities as required by the building permit or otherwise. Refusal or inability to obtain the Certificate of Occupancy will constitute a default under the Loan.
27. SIGN: Borrower agrees to erect and maintain, at Borrower's expense, a sign at the Premises during the period of construction, the location, size, and wording of which shall be subject to Lender's approval, indicating the source of construction financing.
28. INDEMNIFICATION AND EXPENSES: The Loan shall be made without cost to the Lender. All expenses connected with the Loan, including, without limitation, the cost of title insurance premiums and charges, recording fees, survey, cost of preparation of documents, fees charged for the placement or servicing of the Loan, appraisal fees, Lender's counsel's fees, and the Inspector's fees, are to be borne by the Borrower, and the Borrower (and Guarantors, if any) hereby jointly and severally agree to pay such fees and to hold harmless and to indemnify Lender against claims of brokers arising in connection with the execution of this Commitment by Lender or the consummation of the Loan, or whether or not the Loan closes or whether or not this Commitment is terminated for any reason.

The Provident Institution for Savings in the Town of Boston

29. OWNERSHIP OF BORROWER: Management or ownership of the Borrower shall not change in any manner during the term of the Loan.
30. TITLE TO PREMISES: Borrower may not sell, assign, encumber or otherwise transfer title to the Premises or the Project during the term of the Loan.
31. SECONDARY FINANCING: Without the prior written consent of Lender, Borrower and Guarantors may not, during the term of the Loan, pledge as security for other loans any of the Premises or the Project or any other collateral given Lender in connection with the Loan.
32. BORROWER'S REPRESENTATION: This Commitment has been issued to Borrower on the basis of certain information and materials provided by Borrower to Lender or its agents and all representations, information, exhibits, data and other materials submitted with and in support of Borrower's Loan application. Any misinformation or withholding of material information incident thereto shall, at the option of Lender and without limitation to any other right or remedy of Lender, void all of Lender's obligations hereunder.
33. MODIFICATIONS: This Commitment may be amended only in writing executed by Borrower and accepted by Lender.
34. ASSIGNABILITY: This Commitment shall not be assignable by the Borrower without the prior written approval of the Lender, and the Loan shall not be assumable.
35. TIME: Time is of the essence of each and every term, condition, and provision of the Commitment.
36. GOVERNING LAW: This Commitment and the Loan documents to be delivered pursuant hereto shall be deemed to be construed under the laws of the State of Massachusetts.
37. TERMINATION: Lender shall have no obligation to close the Loan if any of the following occurs prior to the closing date:
 - a. Borrower or Guarantor shall have been adjudicated bankrupt or insolvent, or a trustee or receiver shall have been appointed for all or a substantial portion of its property;
 - b. The Borrower or Guarantor shall have filed a petition of bankruptcy, or same has been filed against it;
 - c. There shall have been a material change in either the financial condition of Borrower or Guarantors or a change in the condition or value of the security.
38. ENTIRE AGREEMENT: The Commitment constitutes the entire obligation of Lender, and no covenant, promise, agreement, or undertaking of

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any kind or nature not specifically set forth herein shall, be binding upon Lender.

39. INTENT OF PARTIES: By the acceptance of this Commitment, Borrower agrees that the terms and conditions expressed herein shall survive the closing of the Loan and are to remain in full force until the payment in full of the principal balance of the Loan plus all accumulated interest and other associated costs.
40. SPECIAL CONDITIONS: (A) Loan will be funded on a fixed rate basis at borrower community investment fund rates if borrower qualifies for program and funds are available to Lender. (B) Lender reserves the right to requalify the loan at prevailing interest rates prior to loan closing. (C) Receipt, review, and approval of revised project budget for \$895,500 on a line-item basis, evidencing interest reserve during construction period of at least \$32,000.
41. ACCEPTANCE: This Commitment shall remain open for your acceptance until December 30, 1987, and shall be voided by Lender if written acceptance is not delivered to us by this date.
42. CLOSING: If this Loan is not closed in full compliance with the terms and conditions of this Commitment, The Provident may, at its option, terminate its obligations contained herein.

Very truly yours,

The Provident Institution for Savings

By Krista R. Birardi
Krista R. Birardi
Assistant Vice President

Accepted and agreed to this _____ day of _____, 1987.

Artist Tenants of the South End

By _____

Tax I.D.# _____

KRB:jr

CORNU CONSTRUCTION COMPANY, INC.

Janaury 12, 1988

Zarelli-Doney Associates
175 Portland Street
Boston, Massachusetts

ATTN: Elizabeth McElaney

RE: 1134 Washington Street
Tenant Improvement

Dear Elizabeth:

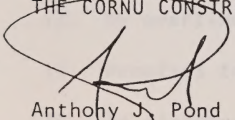
We wish to submit a budget proposal of \$129,220 to do tenant improvement work on Floors 1 and 2 at 1134 Washington Street in accordance with the documents prepared by Robert Zarelli Architects, Inc. and as clarified by Cornu Construction (see attached).

As discussed today, the numbers for plumbing, heating, ventilation and fire protection are allowances only since our bidders have not submitted firm costs for this work. We apologize for this delay.

Upon discussing the project, and receiving our final numbers, we will submit a firm number for the work.

Very truly yours,

THE CORNU CONSTRUCTION COMPANY, INC.



Anthony J. Pond
Construction Manager

AJP/vnf

Enclosure

QUALIFICATIONS
TENANT WORK
1/12/88

1. Exclude labor, material, performance and lien bonds.
2. Tenant will be responsible for relocation of his own equipment, material and personnel in order to allow construction to proceed smoothly. The General Contractor will coordinate this activity with the tenant so as to assure continuous flow of operation of the tenant and contractors.
3. We exclude fire safing or fire proofing other than our penetrations through the floor.
4. We exclude any structural repair.
5. We have carried an allowance of \$12/sf for carpet, furnish and installed.
6. We exclude mosaic tile patching or repair.*
7. We exclude hardwood floor patching or repair.*
8. We exclude column or plaster patching or repair.*
9. We include plywood subfloor to receive new floor finish.
10. Window treatment is not included. In addition, we have not carried window trim repair.
11. Acoustical ceiling to standard 2 x 4 lay-in.
12. All work to be done in conjunction with base building.
13. No overtime included.
14. Premises to be left broom clean. Final cleaning by owner.
15. An allowance of \$11,500 for plumbing, \$5,700 for fire protection and \$32,000 for H & V has been carried in the budget cost.

* Due to existing conditions of occupant's material and stock on floors 1 & 2 there are conditions we could not accurately determine. When these conditions are exposed, the architect should define the scope of work and competitive pricing will be done and cost added to the contract amount.

TENANT WORK
1134 Washington Street
1/12/88

General Conditions		\$ 6,290.00
Plant Equipment		1,450.00
Demolition		1,984.00
Carpentry	Labor	2,735.00
	Material	1,217.00
Doors and Frames	Labor	1,056.00
	Material	5,988.00
Drywall		6,300.00
Acoustical		1,240.00
VCT		4,500.00
Carpet and Base		855.00
Glass and Glazing		455.00
Painting		10,960.00
Toilet Partitions		4,600.00
Toilet Accessories		1,880.00
Plumbing Allowance		— 11,500.00
Fire Protection Allowance		— 5,700.00
H & V Allowance		— 32,000.00
Electric		15,600.00
		<u>\$116,310.00</u>
Permit		1,163.00
		<u>\$117,473.00</u>
10% Fee		11,747.00
		<u>\$129,220.00</u>

The above Construction Company, Inc.
25 Broadway
Boston, Massachusetts 02116

1134 Washington Street
(Back Building)

McGee-Healy, Architects & Planners
200 Massachusetts Avenue
Cambridge, Massachusetts

The Owner and Contractor agree as set forth below.



AIA Document A101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM

1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the Fifth day of February in the year of
Nineteen Hundred and Eighty-eight

BETWEEN the Owner: Hub Building Realty Trust
(Name and address) 1134 Washington Street
Boston, Massachusetts 02111

and the Contractor: The Cornu Construction Company, Inc.
(Name and address) 95 Broadway
Boston, Massachusetts 02116

The Project is: 1134 Washington Street
(Name and location) (Base Building)

The Architect is: Moore-Heder, Architects & Planners
(Name and address) 2067 Massachusetts Avenue
Cambridge, Massachusetts

The Owner and Contractor agree as set forth below.

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ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2

THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Cornu Construction to do all work in accordance with the documents listed on Cornu Construction Company Exhibit A, Rider A -1134 Washington Street, Bid Document dated 1/7/88, Revised 2/1/88 (page 1 attached) and as modified by Cornu Construction Company Exhibit B, Rider B, 1134 Washington Street, Inclusions, Exclusions and Clarifications dated 1/7/88, Revised 2/1/88 (page 1 thru 4 attached).

ARTICLE 3

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

5 days after issuance of proper Building Permit by the City of Boston and written notification to proceed by Hub Building Realty Trust.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

183 calendar days after official start dated noted under paragraph 3.1 above.

See Exhibit E attached.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

No liquidated damages to be applied.

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of Eight Hundred Eighty-seven thousand, Five Hundred Dollars (\$ 887,500.00), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

The following alternates, if accepted in writing by the owner or architect within twenty-one (21) days of construction start, will be added to the Contract Amount.

1. Water/chemical wash at exterior (3 sides)	Add	\$15,000
2. Add light fixtures per drawing #E2 (redlined)	Add	\$ 2,000
3. Add fire alarm system per Zade Engineering letter of 12/10/87 (exclude increase service conductors for main electric switch).	Add	\$ 7,000

Above alternate costs include General Contractor's OH & Fee

4.3 Unit prices, if any, are as follows:

<u>Item</u>	<u>Add</u>	<u>Deduct</u>
Trees in place	\$738 ea.	\$480 ea.
Masonry painting and repair	\$4.25/SF	\$3.00/SF
Stucco repair	\$13.50/SF	\$8.00/SF

It is understood and agreed that the following allowances are included in the above Contract sum and all necessary adjustments (adds or deducts) will be made to the Contract Amount upon completion of the work.

1. Metal cornice and iron column work	Allow	\$10,800
2. Underpinning at elevator shaft	Allow	\$10,800
3. Marble work at front lobby	Allow	\$ 1,200

All unit prices and allowances include General Contractor's OH and fee.

All change orders will be determined by actual labor, tools, material and equipment used and subcontractor's mark up + 10% General Contractor's overhead plus 10% General Contractor's fee.

ARTICLE 5

PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, ~~xxx~~
~~xxxx~~

5.3 Provided an Application for Payment is received by the Architect not later than the
first day of a month, the Owner shall make payment to the Contractor not later than
the twenty-first day of the same month. If an Application for Payment is received by the
Architect after the application date fixed above, payment shall be made by the Owner not later than 21
days after the Architect receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This Schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Ten percent
(10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10 %);

5.6.3 Subtract the aggregate of previous payments made by the Owner; ~~xxx~~

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to
One hundred percent (100 %) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

ARTICLE 6

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Final cost will be determined by the cost report submitted by the General Contractor and agreed to by the owner and owner's representatives. Final payment will be based upon cost, plus the fee as stated under Exhibit C, Cost Breakdown, 1134 Washington Street dated 2/1/88 (attached), plus all adjustments as per agreed change orders, plus cost savings as determined under Article 7.3, plus all retainage withheld to date.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

3% over prime as determined by The Bank of Boston.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Other provisions:

It is understood and agreed that Cornu Construction Company will provide a cost report at the time of each Requisition for the owner's information. The cost report is intended to show cost per general line items and reflect total anticipated cost for the project as a whole. If there is cost savings reflected on the final cost report, it is agreed that the savings will be split 50% to the owner, 50% to the contractor.

ARTICLE 8

TERMINATION OR SUSPENSION

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9
ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101, 1987 Edition.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
----------	-------	-------

See Exhibit A dated 1/7/88, revised 2/1/88 (attached).

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
---------	-------	-------

See Exhibit A dated 1/7/88, revised 2/1/88 (attached).

9.1.5 The Drawings are as follows, and are dated
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

unless a different date is shown below:

Number

Title

Date

See Exhibit A dated 1/7/88, revised 2/1/88 (attached).

9.1.6 The Addenda, if any, are as follows:

Number

Date

Pages

Zade letter dated 12/10/87 attached.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

LIST A
BID DOCUMENTS
7/7/87
REVISED 2/1/92

Other Documents

Hub Building Plans by Moore-Rider, Inc., Architects
Hub Building Specifications by Moore-Rider, Inc., Architects, dated 2/15/87

Doc. No.	Title	Date	Revised
01	Site Plan	2/13/87	
02	Accessories, 1st & 2nd Floor	2/13/87	2/1/92
	Plan Details		
03	1st & 2nd Floor Elev. Specifications	2/13/87	2/1/92
04	Elevation Details	2/13/87	
05	Accessories, 3rd & 4th Floor	2/13/87	1/1/92
	Plans		
06	3rd, 4th & 5th Floor	2/13/87	1/1/92
07	Accessories	2/13/87	2/1/92
08	Window & Daylight Details	2/13/87	1/1/92
09	Transoms Details	2/13/87	
10	Windows & Miscellaneous Details	2/13/87	
11	Floor Plans Heating & Ventilating	2/13/87	2/1/92
12-1	Floor Plans Sanitary & Fire Protection	2/13/87	
12-2	Floor Plans Sanitary & Fire Protection	2/13/87	
13-1	Plumbing Sinks & Sinks	2/13/87	
13-2	Floor Plans Electrical	2/13/87	
13-3	Floor Plans Electrical	2/13/87	
13-4	Legend, Sinks, Sinks, Sinks	2/13/87	
	Electrical		

Witness

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER: Hub Building Realty Trust

CONTRACTOR: The Cornu Construction Company, Inc.

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

CORNU CONSTRUCTION COMPANY, INC.

EXHIBIT A

1134 Washington Street

RIDER A

BID DOCUMENTS

1/7/88

REVISED 2/1/88

Base Building

Base Building Plans by Moore-Heder, Inc., Architects

Base Building Specifications by Moore-Heder, Inc., Architects, dated 5/18/87*

<u>Dwg. No.</u>	<u>Title</u>	<u>Date</u>	<u>Remarks</u>
SP	Site Plan	6/12/87	
D1	Basement, 1st & 2nd Floor Plan Demolition	6/12/87	2/1/88
D2	3rd & 4th Roof Plan Demolition	6/12/87	2/1/88
D3	Elevations Demolition	6/12/87	
A1	Basement, 1st & 2nd Floor Plans	6/12/87	2/1/88
A2	3rd, 4th & Roof Plans	6/12/87	2/1/88
A3	Elevations	6/12/87	2/1/88
A4	Window & Skylight Details	6/12/87	2/1/88
A5	Storefront Details	6/12/87	
A6	Elevator & Misc. Details	6/12/87	
M1	Floor Plans Heating & Ventilating	6/12/87	2/1/88
FP-1	Floor Plans Sprinkler & Fire Protection	6/12/87	
FP-2	Floor Plans Sprinkler & Fire Protection	6/12/87	
FP-3	Plumbing Riser Diagrams	6/12/87	
E-1	Floor Plans Electrical	6/12/87	
E-2	Floor Plans Electrical	6/12/87	
E-3	Legend, Riser Diagrams Electrical	6/12/87	

Tenant Work

Tenant Plans by Robert Zarelli, Architect

Tenant Specifications by Robert Zarelli, Architect, Inc. dated 7/10/87

<u>Dwg. No.</u>	<u>Title</u>	<u>Date</u>	<u>Remarks</u>
A-1	Floor Plans	7/8/87	W/Redlined Revisions
A-2	Schedules	7/8/87	
M-1	Mechanical	7/8/87	
P-1	Plumbing/Mechanical	7/8/87	
E-1	Electrical	7/8/87	

Page two

**RIDER A
BID DOCUMENTS
1/7/88
REVISED 2/1/88**

**Instructions to Bidders
Request for Unit Prices**

*Substitute AIA Document A201, General Conditions of the Contract for Construction 1986
Edition for AIA Document A201, General Conditions of the Contract for Construction 1987 Edition.

1. Bidder will be held to carry their own liability risk for all sufficient insurance to cover their equipment, material, labor and personnel during construction.
2. We will be allowed to set up and (2) install temporary traffic control during the working hours.
3. Bidder to pay all utility charges as is related to heat, water and electricity.
4. Final check as to be by owner. Contractor to brown sign all flags.
5. Security Company or Watchman costs have not been included in our bid.
6. New Mexico Redevelopment Authority has been included in our bid.

Work

1. All work to be done to existing grade and curb cuts. Final check of dimensions to be made to be within 1/8" to existing grade.
2. All work drainage to be provided as have not included any drainage structure or drains.
3. No drainage repairs included other than that directly related to immediate new construction (i.e. storm, sewer, etc.)
4. As have included all work relating to removal of existing and installation of new drainage to be within 1/8" to existing grade.
5. Owner/owner shall be held to carry their own liability risk for all sufficient insurance to cover their equipment, material, labor and personnel during construction.

CORNU CONSTRUCTION COMPANY, INC.
EXHIBIT B
1134 Washington Street

RIDER B
INCLUSIONS, EXCLUSIONS AND CLARIFICATIONS

General Conditions

1. We exclude costs for Performance, Material and Lien Bonds.
2. We exclude costs for permit bond required by City of Boston.
3. We will be allowed free access to roof of adjacent structure to perform corrective masonry and parapet work.
4. Owner and tenant to carry their own Builder's Risk policy and sufficient insurance to cover their equipment, material, stock and personnel, during construction.
5. We will be allowed to set up one (1) inside temporary toilet tied into the existing system.
6. Owner to pay all utility charges as it relates to heat, water and electricity.
7. Final clean up to be by owner. Contractor to broom clean all floors.
8. Security Company or Watchman costs have not been included in our bid.
9. Any Boston Redevelopment Authority guidelines have not been included in our bid.

Site Work

1. All paving to be done to existing curbs and curb cuts. Final grades of bituminous pavings to be similar ($\pm 6''$) to existing grades.
2. All site drainage to be gravity - we have not included any drainage structures or tie-ins.
3. No sidewalk repairs included other than that directly disturbed to accomodate new construction (i.e. storefront, loading dock area, etc.).
4. We have excluded all work relating to removal and disposal of contaminated soils that are encountered outside of building.
5. Owner/tenant debris and unused items on Floors One and Two to be handled by others. Relocation of tenant/owner equipment, material and stock to accomodate construction, to be the responsibility of the tenant/owner.

6. We exclude all new work as it relates to the basement ventilation structures. Upon determination and direction of the architect, we will evaluate and advise.
7. We exclude all storefront and signage lighting other than the fixtures shown on Drawing E-1.
8. We have carried an allowance of \$10,800 for all underpinning work in elevator pit.

Demolition

1. Removal of lead paint in the public areas has not been included. Costs to laminate sheetrock over existing walls has been carried to cover lead paint conditions in those public areas.
2. All hardwood floors are to remain. Any removal, patching or corrective work to be done with tenant fit-up, and priced once all conditions are visible.
3. We exclude removal of contaminated soil.
4. We exclude removal of existing bathroom floors.

Masonry

1. We exclude water chemical cleaning on exterior of building as described under Section 4.1.1.
2. All new brick to be of standard size out of standard manufacturer's colors.
3. Stucco color to match existing as close as possible from manufacturer's standard colors and mixtures.

Ornamental Metal

1. We have carried an allowance of \$10,800 for metal cornice work and cast iron column work, due to more information required to define scope of work.

Roofing

1. We exclude Sections 7.1.6 and 7.2.1 entirely per direction of the architect.
2. Our price includes only broom clean the existing roof prior to installation of new. If the existing roof is to be removed, there will be an additional cost of \$11,495.00

Page three

3. It is assumed that the existing roof rafters and roof deck are undamaged and are structurally sound. Therefore, we have carried no costs to repair, shore or replace any support members.

Windows

1. Window replacements are based on DH-HC 40 style windows.
2. All caulking to be selected from manufacturer's standard colors.

Finishes

1. All metal stud and drywall work is based on accepted manufacturer's requirements, specifically: Using 25 gauge metal stud and track; caulking; no felt; standard methods for required ratings.
2. No painting above the second floor ceiling (either interior or exterior) has been included.
3. No work on interior window trim has been included.
4. We exclude all flooring work.
5. An allowance of \$1,200.00 has been carried for all marble work in lobby 101.
6. We have included fireproofing and safing at new plumbing chases only. All other fireproofing of walls, ceilings and floors in tenant areas to be done as part of tenant work.
7. Cost for column and plaster repair work has not been included as exact scope and extent of determination cannot yet be determined without architectural involvement.

Miscellaneous

1. We exclude all work under Architectural Notes DN 15, DN 16, AN 18, AN 19, AN 22, AN 26, plus detail 8/A4, as well as miscellaneous revisions noted on drawings listed on Bid Document Rider.
2. We have included the loading dock as cast-in-place concrete in lieu of CMU, as we feel this will provide more strength and durability.

THE CORNU CONSTRUCTION COMPANY, INC.

EXHIBIT C

1134 Washington Street

RIDER C

COST BREAKDOWN

1/7/88

General Conditions	\$ 74,900.00
Plant & Equipment	22,580.00
Demolition	74,000.00
Alterations	44,705.00
Site Work	23,325.00
Concrete Work	8,134.00
Masonry, Stucco, Tile	67,750.00
Steel	25,000.00
Ornamental Metal	10,800.00
Carpentry	11,030.00
Roofing	53,553.00
Skylights	7,401.00
Doors & Frames	10,169.00
Roll up grilles	20,580.00
Storefront	23,800.00
Windows	53,000.00
Drywall	27,800.00
Tile - Marble Allowance	1,200.00
Paint	10,265.00
Specialties - Louvers, Sign Panel	12,920.00
Dock Bumpers	250.00
Elevator	85,175.00
Plumbing	40,000.00
Sprinkler	31,900.00
H & V	8,426.00
Electric	65,000.00
	<u>\$813,663.00</u>
Permit	8,130.00
	<u>\$821,793.00</u>
Fee	65,743.00
	<u>\$887,536.00</u>

THE CORNU CONSTRUCTION COMPANY, INC.
EXHIBIT D
1134 Washington Street

RIDER D
UNIT PRICES
1/7/88

<u>Description</u>	<u>Add</u>	<u>Deduct</u>
1. Cut out and patch hardwood floors	7.90/sf	--
2. Trees in place	738/ea.	480/ea.
3. Masonry pointing and repair	4.25/sf	3.00/sf
4. Stucco repair	13.50/sf	8.00/sf
5. Defective sprinkler heads		

Boston, Massachusetts 02109

CORN CONSTRUCTION COMPANY, INC.

 1134 Washington Street
 Boston, Massachusetts

 I = Field Investigation
 S = Shop Drawings
 F = Fabrication
 X = Work in Progress

	WEEKS																							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Base Building																								
Demolition & Asbestos Removal		X	X	X	X	X	X	X				X												
Alterations					X	X	X				X													
Masonry	I	I	F	F	F	F		X	X			X	X	X										
Miscellaneous Metals					I	S	S	F	F	F	F	X	X	X										
Ornamental Metals	I	I	I	S	S	S	F	F	F	F	X	X	X	X										
Carpentry						S	S	S		X	X				X	X								
Waterproofing						S	S	S							X	X	X							
Roofing			I	I	S	S	S	F	F	F	F	X	X	X										
Skylights						S	S	S	F	F	F	F	F	F	X	X								
Doors and Frames				I	I	S	S	F	F	F	F	F	F	F	F	X	X							
Special Doors						S	S	F	F	F	F	F	F	F	F	X	X							
Store Fronts	I	I	S	S	S	S	F	F	F	F	F	F	F	F	F	X	X							
Windows	I	I	S	S	S	S	F	F	F	F	F	F	F	F	F	X	X							
Drywall						S	S	S				X	X	X	X	X								
Stucco						S	S	S			F	F	X	X	X	X								
Tile and Marble				I	I	S	S	F	F	F	F	F	F	F	F	X	X							
Elevators				I	I	S	S	S			F	F	F	F	F	X	X							
Plumbing		X	X	X	X				X	X	X	X												
Sprinkler			X	X	X				X	X	X	X												
H & V												X	X	X	X									
Electric		X	X						X	X	X	X												
Finishes Base																								
Permits Demo	P	P																						
Permits Building	P	P	P	P	P	P																		
Sitework																		X	X	X				

EXHIBIT F

Section 306: Non-Discrimination in Employment

The Redeveloper agrees that in the construction of the Work:

a. The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, sex, religion or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, color, sex, religion or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this non-discrimination clause.

b. The Redevelopment will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract of understanding, a notice, to be provided advising the said labor union or worker's representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, both of which are attached hereto as Exhibit J, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of the United States Department of Labor.

e. The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of the United States Department of Labor, or the Secretary of HUD pursuant thereto, and will permit access to the Redeveloper's books, records, and accounts by the Authority, and said Departments for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the Redeveloper's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, the provisions of Section 806 hereof shall be applicable. In the event that this Agreement is terminated or suspended in whole or in part, pursuant to Section 806 hereof, the Redeveloper may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375

of October 13, 1967, or by rules, regulations, or orders of the Secretary of the United States Department of Labor, or as otherwise provided by law.

g. Redeveloper, for itself and all successors and assigns, further agrees, in the construction of the Work, to pursue and cause the general contractor to pursue the efforts hereinafter described with a goal to employ workers in construction so that the worker hours on a craft-by-craft basis shall be performed as follows:

- (i) at least 50% by bona fide City of Boston residents;
- (ii) at least 25% by minorities; and
- (iii) at least 10% by women.

Such efforts consist of the following:

- (1) Redeveloper shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the contractor to pursue the efforts enumerated in

this Section (g) and to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts;

- (2) Authority, Redeveloper, contractor, and every subcontractor shall each designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein;
- (3) Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the Authority, Redeveloper, contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the improvements and the manning requirements for construction activity over the life of the construction period;
- (4) Each request for qualified construction workers made by any person involved in the construction of the

improvements to a union hiring hall or business agent shall contain a recitation of such worker hour goals and a request that qualified referees for construction position on the improvements be selected in the same proration as such goals; provided however, that if at the time of any such manning requests the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proration among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or whom such a manning request has been submitted fails to comply with such request, the affirmative action officer of such requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action officer of the Authority.

(5) All persons applying directly to the contractor, or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the Authority and a written record of such referral shall be made, a copy of which shall be sent to such officer; and

(6) Redeveloper, contractor, and every subcontractor shall each maintain records reasonably necessary to ascertain compliance with the requirements of this Section for at least one year after the issuance of the Certificate of Completion and will make the same available for inspection by the Authority upon reasonable notice.

h. Redeveloper, for itself and all successors and assigns, further agrees that in the construction of the Work, Redeveloper shall comply and shall require its general contractor to comply with the Mayor's Executive Order "Encouraging Minority Business Enterprise" dated June 28, 1978 effective July 1, 1978.

i. Redeveloper, for itself and all successors and assigns, further agrees that in the construction of the

Work, Redeveloper shall comply with the provisions of the First Source Agreement relating to permanent employment positions for city residents.

g. The Redeveloper will include the provisions of Paragraphs (a) through (i) of this Section in every employment contract, whether union or nonunion, and in every other contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of his contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the Authority or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Redeveloper becomes involved in or is threatened with litigation with a contractor, subcontractor or vendor as a result of such

direction by the Authority or HUD, the Redeveloper may request that the United States enter into such litigation to protect the interest of the United States.

For the purpose of including the provisions of this Section in any construction contract, subcontract, or purchase order (the "Contract"), as required hereby, the first three lines of this Section shall be changed to read: "During the performance of this Contract, the -- (Contractor/Subcontractor/Vendor) agrees as follows:". The provisions of this Section as stated herein shall be inserted after the above-quoted phrase and the term "Contractor", "Subcontractor", or "Vendor", as the case may be, shall be substituted for the term "Redeveloper" as it appears throughout this Section.

Section 307: Access to the Property by Authority and City
Personnel

The Redeveloper, its successors and assigns, shall from time to time after issuance of a Certificate of Completion until the expiration or termination of the Plan, at all reasonable hours, give to the duly authorized representatives

ADDENDUM #1
1134 Washington Street

ZADE

ZADE COMPANY INC.
Consulting Engineers
140 Beach St., Boston, MA 02111
(617) 338-4406

RECEIVED

DEC 12 1987

December 10, 1987

MOORE - HEDER

Mohammed Zade Ph.D., P.E.
Mevlut S. Koymen P.E.
Muzaffer Mucetitzade M.Sc., P.E.

RECEIVED

DEC 17 1987

ZADELL & ASSOCIATES

Moore-Heder Architects
2067 Massachusetts Avenue
Cambridge, Massachusetts 02140

ATTN: Mr. Lajos Heder

RE: 1134 Washington Street
Boston, MA

Dear Lajos:

Regarding above referenced project I met with Boston Fire Department authorities on November 30, 1987 for the second time. Some revisions must be made to the building electrical and fire protection system to incorporate changes made in Boston Fire Codes, elevator regulations and electric codes. Attached please find revised fire alarm riser diagram. Changes can be summarized as follows:

1. Each elevator lobby will have two cross connected smoke detectors interlocked with elevator controller.
2. All common corridors will have smoke detectors.
3. Master box will be provided in the vestibule at Washington Street entrance tied into city loop.
4. Each retail store will have pull stations.

Additional cost due to these changes are approximately:

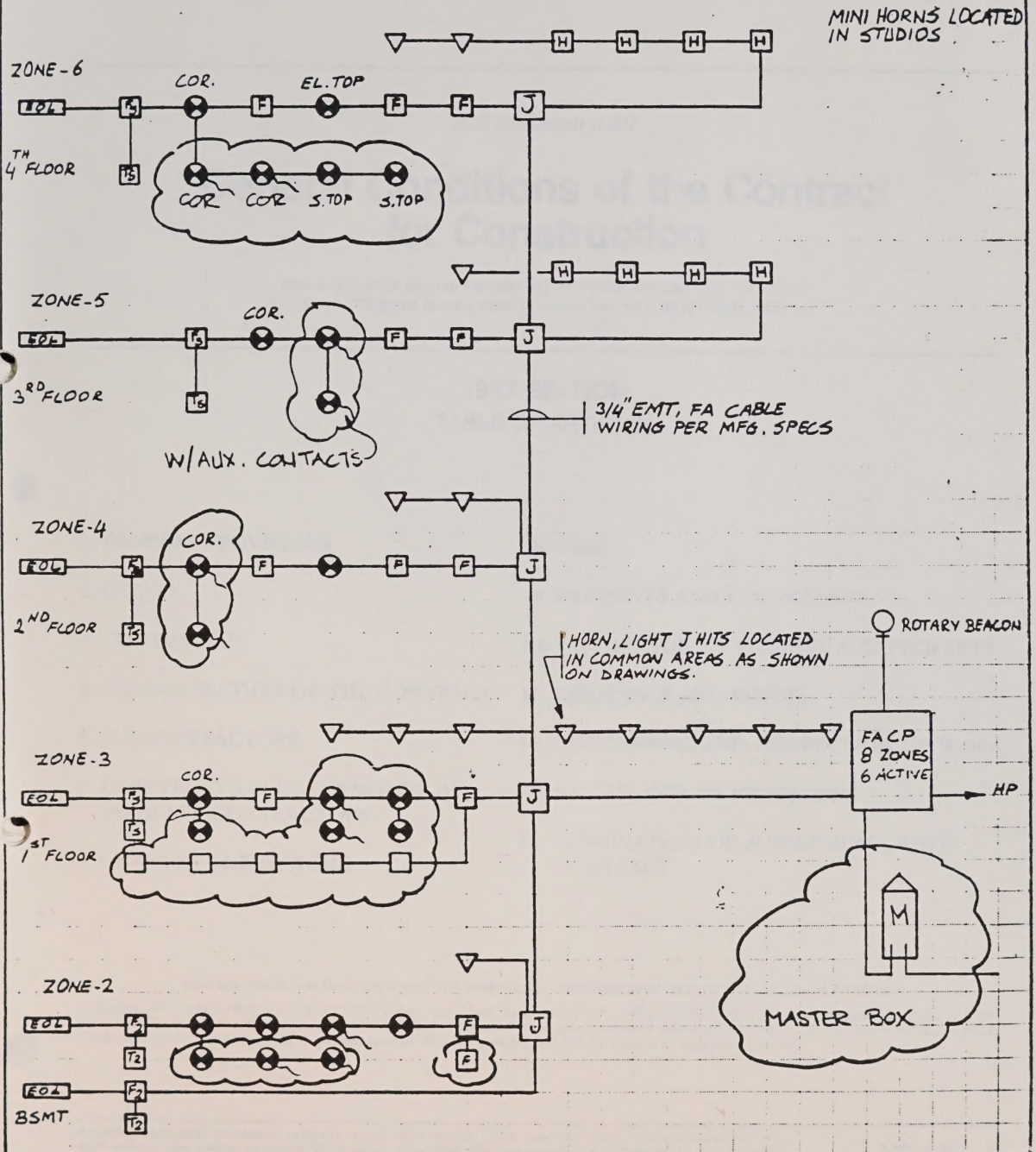
16 smoke detectors @ 250 \$ each	4000 \$
6 pull stations @ 150 \$ each	900 \$
1 master box @ 2000 \$	2000 \$
Total	6900 \$

Page 2

- Muzaffer Muctehitzade
Muzaffer Muctehitzade, P.E.

ZADE COMPANY INC.
 Consulting Engineers
 140 Beach Street
 BOSTON, MASSACHUSETTS 02111
 (617) 338-4406

JOB 1134 WASHINGTON ST
 SHEET NO. _____ OF _____
 CALCULATED BY _____ DATE DEC 12, 87
 CHECKED BY _____ DATE _____
 SCALE _____





AIA Document A201

General Conditions of the Contract for Construction

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION
WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION*

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CONTRACT |

This document has been approved and endorsed by the Associated General Contractors of America.

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equip-

ment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the

Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2

OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assess-

ments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. **Note 1**

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- 1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- 2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- 3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- 4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

* **3.12.4** Shop Drawings, Product Data, Samples and similar submittals are ~~XXX~~ Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for

which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the

Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Archi-

tect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Con-

tractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying

out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to execute the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

4.3.8.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data

substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.5.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 15 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.3 and no decision has been rendered.

4.5.2 Rules and Notices for Arbitration. Claims between the Owner and Contractor not resolved under Paragraph 4.4 shall, if subject to arbitration under Subparagraph 4.5.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.5.3 Contract Performance During Arbitration. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.4.

4.5.4 When Arbitration May Be Demanded. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.3.2.

4.5.4.1 When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.5.4.2 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.5.1 and 4.5.4 and Clause 4.5.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.5.5 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose direct or substantial responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.5.6 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

4.5.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such change.

SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- 1 a change in the Work;
- 2 the amount of the adjustment in the Contract Sum, if any; and
- 3 the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.5.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- 1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 unit prices stated in the Contract Documents or subsequently agreed upon;

3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.5.5, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

- 1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
- 2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the

Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may modify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or another contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or design-

nated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.5.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make

such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.5.

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.1.4.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

- 2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 4. claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- 7. claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity

other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.1.1 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.3.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation, by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.5. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.5. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.11 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date

for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures.

The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- 1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.
- 2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment, and
- 3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 5.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- 1** issuance of an order of a court or other public authority having jurisdiction;
- 2** an act of government, such as a declaration of national emergency, making material unavailable;
- 3** because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- 4** if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or
- 5** the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- 1** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 3** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- 4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify

tify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the

Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.